

April 8, 2022

**VIA ECF**

The Honorable George C. Hanks, Jr.  
United States Courthouse  
515 Rusk Street, Room 6202  
Houston, Texas 77002

**VIA EMAIL**

(**cm4147@txs.uscourts.gov**)  
Gabrielle Clair  
Case Manager, Judge George C. Hanks, Jr.  
United States Courthouse  
515 Rusk Street, Room 5300  
Houston, Texas 77002

**RE: Pre-Motion Conference Letter**  
***State of Texas, et al. v. Rising Eagle Capital Group LLC, et al.***  
**Case No. 4:20-cv-02021**

Your Honor:

Plaintiff States of Arkansas, Indiana, Michigan, North Carolina, North Dakota, Ohio, and Texas (collectively “Plaintiff States”), in compliance with Rules 6(C)(5) and 6(E), request a conference to ask the Court expand the deadline for the discovery, currently set for April 8, 2022. In support thereof, Plaintiff States specify the following:

1. In September 2021, Plaintiff States served Defendants Shapiro and Smith with requests for production. Those requests included requests for (i) documents discussing defendants’ compliance with state and federal telemarketing laws; (ii) complaints from any source related to prerecorded calls; (iii) complaints or communications from any source related to a person stating that he or she did not want to be called; and (iv) documents relating to investigatory, disciplinary, enforcement, or legal actions taken against Defendants related to state and federal telemarketing laws. The Plaintiff States also served Defendants with interrogatories that asked Defendants to identify all lawsuits brought against Defendants arising out of telemarketing activities.

2. Defendants responded to Plaintiffs’ document requests and either stated that no documents exist or that all documents would be produced. Defendant Shapiro responded to Plaintiffs’ interrogatories by identifying two matters, *Moore v. Duffie* and a demand letter from Robert Doane, while Defendant Smith identified just one lawsuit filed by eHealth.

3. On March 14, 2022, Plaintiffs learned that Defendants were involved in a lawsuit, *Mary Bilek v. National Congress of Employers, Inc. et al.*<sup>1</sup> Plaintiffs immediately began pulling and reviewing publicly available documents.

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<sup>1</sup> Case No. 1:18-cv-03083, Northern District of Illinois (04/30/18).

4. On March 16, 2022, Defendant Smith sat for Plaintiffs' deposition, most of which consisted of Defendant Smith denying that he remembered anything about the events, people, or circumstances at issue in this matter. Defendant Smith denied ever having his deposition taken before and denied providing any testimony in the lawsuit of *Mary Bilek v. National Congress of Employers, Inc. et al.*

5. On the evening of March 16, 2022, Plaintiffs contacted the plaintiffs' attorney in *Mary Bilek v. National Congress of Employers, Inc. et al.* to request additional documents. Plaintiffs learned that Defendant Smith had been deposed in that matter just six months prior. Plaintiffs were able to obtain some documents from plaintiffs' counsel in the *Bilek* matter – including a transcript of the deposition of Defendant Smith<sup>2</sup> – but most of the relevant documents had been marked confidential and could not be shared.

6. On March 17, 2022, Plaintiffs continued to review documents from the *Bilek* matter and learned that Defendants Shapiro and Health Advisors of America had been regularly forwarded telemarketing complaints by their client Health Insurance Innovations, resulting from calls placed by Defendants Spiller and Mears. These complaints are unquestionably responsive to Plaintiffs' requests for production, though they were not produced.

7. On March 18, 2022, Defendant Shapiro sat for Plaintiffs' deposition and denied that he received copies of complaints from Health Insurance Innovations.

8. Shortly after the depositions of Defendants Smith and Shapiro, Plaintiffs issued several third-party subpoenas seeking the evidence that Defendants should have produced. However, Plaintiffs need more time to obtain the highly relevant documents and to conduct depositions of the third parties to authenticate the documents and obtain other relevant information. Plaintiffs are hopeful that the additional discovery can be conducted in thirty days, and therefore requests that the discovery deadline be extended 30 days, which would also require slight adjustments to other dates in the Docket Control Order. A proposed DCO with adjusted dates accompanies this letter.

9. Plaintiffs have conferred with Defendants Spiller and Mears who agree to the States' requested extension.

10. On April 6<sup>th</sup>, Plaintiffs emailed Defendant Shapiro's counsel informing him that we intended to seek an extension of the discovery deadline due to Defendants' failure to produce relevant materials. Plaintiffs conducted a meet and confer with Mr. Davidson on April 7<sup>th</sup>, after which Plaintiffs provided him with the above referenced evidence that Defendants failed to produce relevant discovery. The State of Texas briefly conferred with

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<sup>2</sup> Defendant Smith was deposed in the *Bilek* matter, three days before Plaintiffs issued his interrogatories.

Mr. Davidson on April 8<sup>th</sup>, during which conference he indicated that he had reviewed the materials provided but that he did not agree to the extension of the discovery deadline.

11. On April 6<sup>th</sup>, Plaintiffs emailed Defendant Smith informing him that we intended to seek an extension of the discovery deadline due to Defendants' failure to produce relevant materials. Defendant Smith did not respond to Plaintiffs' email. Plaintiffs again tried to call Defendant Smith on April 8<sup>th</sup>, but as of the time of filing this letter, Defendant Smith has not returned Plaintiffs' call.

12. Accordingly, Plaintiff States respectfully request that the Court extend the deadline for the completion of discovery for thirty days, to May 8, 2022, and slightly adjusting other deadlines in the Docket Control Order in accordance with the accompanying proposed modified DCO.

Respectfully,

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